IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4118 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 & 2 YES; 3 to 5 NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

KALUBHAI H VALAND

Appearance:

1. Special Civil Application No. 4118 of 2001

MR HS MUNSHAW for Petitioner No. 1

MR GK RATHOD for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 18/01/2002

C.A.V. JUDGEMENT

1. By way of this petition under Articles 226 and 227 of the Constitution, the petitioner-Gujarat State Road Transport Corporation- has challenged the award of

the Industrial Tribunal, Vadodara in Reference (IT) No.20 of 1998 whereby an heir of its employee is ordered to be employed from the date of his application, i.e. 23.7.1992, with backwages from that date under the scheme for compassionate appointment.

2. The simple undisputed and relevant facts to be culled out from the record are that a conductor, namely, Kalubhai H. Valand was, after service of 22 years, discharged from service from 6.6.1992 on the basis of his permanent unfitness consequent to loss of eyesight. An application dated 23.7.1992 was, therefore, made to take his youngest son as a clerk in employment of the petitioner, who was aged 23 and matriculate at that time. The claim was based on a condition of the settlement and a general standing order applicable to the case. The demand having not been acceded, the industrial dispute raised by the trade union was referred to the Industrial Tribunal. The case of the petitioner all throughout was that the father having not opted for alternative employment and having insisted on being retired on the ground of being unfit, his son could not have claimed the benefit of compassionate appointment.

3. A preliminary jurisdictional issue was sought to be raised for the first time by the learned advocate Mr.Munshaw for the petitioner by submitting that the beneficiary of the impugned award was never a workman of the petitioner and, therefore, any dispute involving his employment or non-employment could not be termed as an "industrial dispute", nor was he covered by the definition of "workman" as defined in Section 2 (s) of the Industrial Disputes Act, 1947 (`the Act'). The submission, therefore, was that both the reference and its adjudication was incompetent and without jurisdiction. This argument can hardly stand beyond the facile reading of the Act. Although the beneficiary of the award was obviously and admittedly not a workman within the definition of the Act, it cannot take away the dispute from the definition of "industrial dispute" which is defined as under in section 2 (k):

> "Sec. 2 (k) - "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

A careful reading of the above definition would reveal

that any dispute between the employer and the workmen connected with the employment or non-employment of any person can be an industrial dispute. The dispute in the present case having been raised and espoused by the trade union of workmen, there was nothing illegal or incompetent about its reference and its adjudication by the Tribunal to which it was referred.

4. The petitioner's general standing order No.361 of 1973 stipulates that:

> ".....If an employee of the Corporation dies or becomes permanently disabled while in service and there is no other earning member in the family, one member of his/her family can directly apply for a suitable post in S.T., when names for such vacancy are called for from the Employment Exchange, subject to the condition that his/her name is registered in the Employment Exchange. Such applicant will be given preference and the Appointing Authority will be competent to appoint him/her straightaway in an existing vacancy in Class-III and IV posts, subject to the condition that the applicant possesses the required qualifications etc. for the post and is otherwise suitable on merits. Such cases will be placed for post facto approval before the Selection Committee concerned."

4.1 Para (30) of the so-called `Labour Settlement' which was relied upon by both the parties extended the benefit of compassionate appointment to the heirs of even a daily rated employee if such employee had died in harness or was discharged on the ground of permanent disability. The petitioner relied upon Clause 37 (7) of the Settlement to submit that the employees suffering permanent disablement after an accident during the course of employment were entitled to an alternative job and duties which he could perform even with the disability without any reduction in pay. In the facts of the present case, the father could have continued in service and drawn the same salary but had insisted on being retired on the basis of his own assertion that he was unable to serve even as a peon or helper as he had totally lost his vision. Therefore, in effect, the father had practically renounced his job by expressing his own unwillingness rather than because of disability, evidently with a view to secure a job for his son, according to the submission. It was also submitted that coming across such cases, the management had devised a policy of not granting compassionate appointment in cases

where the employee had refused to accept re-categorization and that, in any case, compassionate appointment could not have been claimed as a matter of right. Clause 2 of the Labour Settlement for the period from 1.8.1970 to 31.7.1977 was relied upon to submit that particularly for the case of visual impairment, provision was made not to discharge an employee on the ground of being unfit if the employee was prepared to work on another post.

5. In the facts of the present case, the father was admittedly discharged on the ground of permanent disability without and before being offered any alternative job. The policy or practice of the management of not allowing compassionate appointment in case the employee had refused to accept an alternative job is not placed on record in black and white. And the petitioner has also failed to show any co-relation between the provision for recategorisation and the benefit of compassionate appointment. Therefore, it is difficult to infer that one benefit could be set off against the other by or in the name of implementing an obscure management policy. Instead, a conjoint reading of the relevant Clause No.2 of Schedule II of the Labour Settlement for the period from 1.8.1970 to 31.7.1973, Clause No.30 (7) of the Settlement for the period from 1.8.1987 to 31.7.1992 and G.S.O. No.361 of 1973 indicates a beneficial scheme under which the effort is made to facilitate continuation of employment of an employee who is rendered unfit due to visual deficiency or accidental injuries, and such employee is to be discharged on the ground of unfitness as a last resort when he refuses to do alternative work that may be assigned to him. However, once an employee is discharged on the ground of permanent disability, the question of giving compassionate appointment to an eligible heir arises and the issue whether the disabled employee had accepted the alternative work or not does not in any way enter into the consideration of an application for compassionate appointment. Therefore, the policy, if any, as canvassed on behalf of the petitioner, has no basis, express or by necessary implication, in the provisions made for compassionate appointment. And the argument that the privilege and facility of compassionate appointment was or was likely to be abused cannot be accepted when the petitioner had consistently failed to link up recategorisation and compassionate appointment in the successive settlements as also avoided to put such policy into black and white for uniform application in all such cases.

6. The learned counsel Mr.Munshaw relied upon the judgments of the Supreme Court in LIFE INSURANCE CORPORATION OF INDIA v. MRS. ASHA RAMCHANDRA AMBEKAR [1994 AIR SCW 1947] to submit that mandamus cannot be issued to direct appointment on compassionate ground where such appointment would be contrary to statutory instructions or provisions. The judgment in UMESH KUMAR NAGPAL v. STATE OF HARYANA [1994 AIR SCW 2305] was cited to submit that provisions for compassionate appointment have to be made by the Rules or by the executive instructions of the authority concerned and such employment cannot be offered by individual functionary on ad-hoc basis. STATE OF HARYANA v. NARESH KUMAR BALI [1994 AIR SCW 2539] was relied upon to submit that Court should not exercise the power of the authorities itself and direct appointment of a person on compassionate ground. HIMACHAL ROAD TRANSPORT CORPORATION v. DINESH KUMAR [1996 AIR SCW 2727] was relied upon to submit that, at the most, appropriate authority can be directed to consider the case in light of relevant rules and subject to availability of post. And, in a judgment of this Court in SHAIKH ASIF IQBAL BAVAMIYA v. GUJARAT STATE ROAD TRANSPORT CORPORATION [1996 (2) GLR 106], in which the claimant was found to be not entitled to the benefit of compassionate appointment and the application was also made after a lapse of four years, the relief was refused. No arguments were offered to explain as to how any of the above judgments supported the case of the petitioner in denying compassionate appointment in question.

7. In the facts of the present case, it appears from the record that the necessary documents along with an application for compassionate appointment were submitted to the petitioner within the prescribed time and the same were verified by a confidential enquiry of which report dated 16.4.1993 was also submitted to the Divisional Controller, Godhra. Even otherwise, no other objection to the grant of compassionate appointment to the son of the respondent has been stated. Therefore, in short, the petitioner was required to consider the application of the respondent for compassionate appointment in terms of the above mentioned Settlement and General Standing Order. However, it is not certain that exactly at which point of time the compassionate appointment could have been given as the appointment was also dependent upon vacancy. In such circumstances, the impugned direction to make appointment with retrospective effect and even to pay backwages from the date of application cannot be wholly confirmed. In this context, the learned counsel for the respondent conceded that he did not insist on the

award of any amount by way of backwages but the case of the respondent should be considered from the date when he was found eligible and he could have been appointed according to the vacancy and in terms of the G.S.O. No.361 of 1973 for the purpose of seniority. Accordingly, the petition is partly allowed and the impugned award is modified to the extent that Shri Kalubhai H. Valand shall be considered for compassionate appointment in terms of G.S.O. No.361 of 1973 of the petitioner and after giving a deemed date of appointment accordingly, he shall be allowed to serve and earn his wages on appropriate post within one month of the receipt of a copy of this order. Rule is made absolute to the aforesaid extent with no order as to costs.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)